



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,386	04/28/2000	Michael Wayne Brown	AUS000035US1	3329

28722 7590 05/06/2004

BRACEWELL & PATTERSON, L.L.P.
P.O. BOX 969
AUSTIN, TX 78767-0969

EXAMINER

VON BUHR, MARIA N

ART UNIT	PAPER NUMBER
----------	--------------

2125

DATE MAILED: 05/06/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,386

Applicant(s)

BROWN ET AL.

Examiner

Maria N. Von Buhr

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 Apr 2000, 03 Jul 2000 & 24 Feb 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 Apr 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-102 are pending in this application.
2. Examiner acknowledges receipt of Applicant's information disclosure statement, received 24 February 2003, with accompanying reference copies, which has been taken into consideration for this Office action.
3. The informal drawings filed in this application are acceptable for examination purposes only. When the application is allowed, Applicant will be required to submit new formal drawings.
4. The specification is objected to because the co-pending applications referred to on pages 14-16, 19, 20 and 27 have not been properly identified. Correction is required.
5. Applicant has incorporated by reference co-pending applications, at pages 14-16, 19, 20 and 27 of the specification. Examiner notes that incorporation by reference of an application in a printed United States patent constitutes a special circumstance under 35 U.S.C. §122 warranting that access of the original disclosure of the application be granted. The incorporation by reference will be interpreted as a waiver of confidentiality of only the original disclosure as filed, and not the entire application file, *In re Gallo*, 231 USPQ 496 (Comm'r Pat. 1986). If Applicant objects to access to the entire application file, two copies of the information incorporated by reference must be submitted along with the objection. Failure to provide the material within the period provided will result in the entire application (including prosecution) being made available to petitioner. The Office will not attempt to separate the noted materials from the remainder of the application. Compare *In re Marsh Engineering Co.*, 1913 C.D. 183 (Comm'r Pat. 1913).
6. Claims 10, 42 and 67 are objected to because of the following informalities: "an network" should be corrected to -- a network --. Appropriate correction is required.
7. Claims 11, 21, 31, 32, 43, 53, 63, 64, 68, 78 and 88 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claims 11, 43 and 68, there is no clear context for the presence of occupants, and hence no clear and proper, functional antecedence for the presence of an "occupant status."

In claims 21, 53 and 78, there is no clear context for the presence of occupants, and hence no clear and proper antecedent basis for the introduction of "additional occupants."

In claims 31, 63 and 88, there is no clear and proper antecedent basis for "said meal selections," since inconsistent terminology has been used.

In claims 32 and 64, there is no clear and proper functional antecedence for the existence of "a data storage medium from which said dietary needs for said particular user are received," such that such a data storage medium can be updated.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by Applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by Applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by Applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 10, 13, 14, 18, 33, 42, 45, 46, 50, 65, 67, 70, 71, 75, 89 and 96 are rejected under 35 U.S.C. §102(a) and (e) as being clearly anticipated by Del Giorno (U.S. Patent No. 5,899,502), which discloses a "method of making an individualized restaurant menu for a customer desirous of avoiding ingestion of customer-selected ingredients. A database is loaded into a computer. Names of all the ingredients used by the restaurant are loaded into the database. A plurality of recipes are loaded into the database. Each recipe comprises ingredients selected from the ingredients, named in the database. The customer selects any ingredients the customer wishes to avoid. The customer's name is entered into the database in association with the names of ingredients which the customer has selected as to-be-avoided. The database of recipes is automatically searched for the ingredients-to-be-avoided.

All available recipes not containing ingredients-to-be-avoided are printed on a menu, customized for the customer" (see the abstract), "particularly for a customer desirous of avoiding ingestion of customer-selected ingredients ... persons who are allergic to certain ingredients may suffer adverse reactions, including in extreme cases anaphylactic shock and death, as a result of ingesting such ingredients ... others have been advised by their doctors to avoid such things as cholesterol or sodium" (see, at least, col. 1). Del Giorgio further teaches basing selection upon availability of ingredients (see, at least, col. 5, lines 20-24), and providing for remote access to the database (see, at least, col. 2, lines 15-17).

10. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 5, 15-17, 20, 22, 23, 31, 34, 37, 47-49, 52, 54, 55, 63, 66, 72-74, 77, 79, 80, 88, 91-93, 95 and 97-99 are rejected under 35 U.S.C. §103(a) as being unpatentable over Del Giorgio (U.S. Patent No. 5,899,502) as applied to claims 1, 33, 65, 89 and 96 above, and further in view of Neuhaus (U.S. Patent No. 5,832,446).

As per claims 2, 5, 34, 37, 66, 91-93, 95 and 97, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for networked communication using servers, as instantly claimed. In this regard, Neuhaus teaches the well-known nature of such communication (see, at least, the abstract; col. 4, lines 10-30). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorgio to utilize such communication, because Neuhaus teaches a resultant increase in versatility.

As per claims 15-17, 20, 22, 23, 31, 47-49, 52, 54, 55, 63, 72-74, 77, 79, 80, 88, 98 and 99, although Del Giorgio discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorgio does not specifically provide for using information pertaining to lifetime of available ingredients, kitchen equipment availability, meal preparation time

constraints, budgeting, and using alternate ingredients to modify recipes, respectively, as instantly claimed. In this regard, Neuhaus teaches each of these features in a menu preparation environment (see, at least, the abstract; col. 2, lines 34-57; col. 3, lines 4-35; col. 5, lines 45-47; col. 6, lines 62-66). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize such features in the system of Del Giorno, because Neuhaus teaches the benefit of saving money as a result, by avoiding purchasing unnecessary ingredients and/or planning meals which cannot be prepared because of the lack of necessary equipment and/or ingredients.

12. Claims 3, 4, 6-9, 35, 36, 38-41 and 94 are rejected under 35 U.S.C. §103(a) as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502) as applied to claims 1, 33 and 89 above, and further in view of Diaz et al. (U.S. Patent No. 5,890,128).

As per claims 3, 4, 35, 36 and 94, although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specifically provide for portability and/or use of personal devices, respectively, as instantly claimed. In this regard, Diaz et al. teach the well-known nature of such portability and personal device (see, at least, the abstract; cols. 1-4). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorno to utilize such capability, because Diaz et al. teach a resultant increase in convenience for the user.

As per claims 6-9 and 38-41, although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specifically provide for taking health plan, intake, exercise and environmental factors into consideration, respectively, as instantly claimed. In this regard, Diaz et al. specifically teach the well-known nature of using electronic devices to monitor such activity (see, at least, the abstract; cols. 1-4). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorno to also take such factors into consideration, because Diaz et al. teach the purpose of such monitoring to be the maintenance of health through dietary management, and the benefit of tailoring such management to individual users, for an increased efficiency and accuracy of dietary management.

13. Claims 11, 12, 21, 26, 27, 32, 43, 44, 53, 58, 59, 64, 68, 69, 78, 83, 84, 90 and 101 are rejected under 35 U.S.C. §103(a) as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502) as applied to claims 1, 33, 65, 89 and 96 above, and further in view of Ecer (U.S. Patent No. 5,412,564).

Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specify taking into account the number of people a meal is being planned for, nor controlling the manner in which information is presented to a user, nor the updating of stored information, respectively, as instantly claimed. In this regard, Ecer teaches such features in a diet planning environment (see, at least, the abstract; col. 1, lines 51-60; col. 3, lines 38-39; col. 3, line 60 - col. 4, line 2). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to modify the system of Del Giorno to utilize such features, because Ecer teaches the benefit providing versatility the menu planning.

14. Claims 19, 28-30, 51, 60-62, 76, 85-87, 100 and 102 are rejected under 35 U.S.C. §103(a) as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502) as applied to claims 1, 33, 65 and 96 above, and further in view of Halverson (U.S. Patent No. 6,301,564).

Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specify event planning and scheduling, as instantly claimed. In this regard, Halverson teaches using menu planning to organize and schedule "events" (see, at least, the abstract; col. 1, lines 25-50). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to utilize the system of Del Giorno in such an event planning environment, because Halverson teaches the additional flexibility and versatility of providing a particular dining experience.

15. Claims 24, 25, 56, 57, 81 and 82 are rejected under 35 U.S.C. §103(a) as being unpatentable over Del Giorno (U.S. Patent No. 5,899,502) as applied to claims 1, 33 and 65 above, and further in view of Szabo (U.S. Patent No. 5,954,640).

Although Del Giorno discloses basing usage of an electronic cookbook upon the dietary needs of a particular user, as noted above, Del Giorno does not specify detecting food/medication interactions

and alerting the user of any such interactions, as instantly claimed. In this regard, Szabo teaches a “method for proposing and providing nutritional supplementation for a person comprising the steps of receiving personal information, e.g., relating to health and diet, about the person, determining a health model for the person, determining an effect on the health model for at least two nutritional supplements, optimizing a proposed nutritional supplementation for the person based on the personal information about the person and effect for the at least two nutritional supplements, through employment of the health model, and outputting a proposed nutritional supplementation including amounts of at least two nutritional supplements” (see the abstract), wherein an “activity model proposes a benefit of a nutritional supplement, while a toxicity model compels a limitation in dose. The activity and toxicity models may be combined into an efficacy model. Where the individual models do not explicitly account for interactions with other factors, models, and nutritional supplements, a separate interaction model may be provided to inform the consumer of potential interactions and seek to prevent hazards or inefficiencies, and to determine whether beneficial interactions are present or may be increased, for example by combining magnesium and vitamin D. Another example is the ability of ascorbic acid to degrade nitrosamines, which form from nitrites in foods, for example preserved meats and smoked fish. Thus, the nutritional supplementation optimization may propose that orange juice, a food, be consumed when lox and bagels are also consumed. Thus, the proposal is not limited to nutritional supplementation with micronutrients alone” (see, at least, col. 8, lines 27-45). It would have been obvious, to one having ordinary skill in the art, at the time the instant invention was made, to include such an alert in the system of Del Giorno, because Szabo discloses a resultant increase in efficiency and safety of nutritional suggestions to a user.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR §1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. §103(c) and potential 35 U.S.C. §102(e), (f) or (g) prior art under 35 U.S.C. §103(a).

17. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. Applicant is advised to carefully review the cited art, as evidence of the state of the art, in preparation for responding to this Office action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria N. Von Buhr whose telephone number is 703-305-3837. The examiner can normally be reached on M-F (9am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703-308-0538. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Maria N. Von Buhr
Primary Patent Examiner
Art Unit 2125

MNVB
4/29/04